

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GUARDIAN INDUSTRIES CORP.,

Plaintiff,

v.

DELL, INC.; GATEWAY, INC.; HEWLETT-PACKARD CO.;
ACER INC.; ACER AMERICA CORP.; AOC INTERNATIONAL;
ENVISION PERIPHERALS, INC.; TPV TECHNOLOGY, LTD.;
TPV INTERNATIONAL (USA), INC.; AU OPTRONICS CORP.;
AU OPTRONICS CORPORATION AMERICA
a/k/a AU OPTRONICS AMERICA, INC.; BENQ CORP.;
BENQ AMERICA CORP.; CHUNGHWA PICTURE TUBES, LTD.
a/k/a CHUNGHWA PICTURE TUBES CO.;
TATUNG CO.; TATUNG CO. OF AMERICA, INC.;
BOE HYDIS TECHNOLOGY CO., LTD.;
BOE HYDIS AMERICA INC.; CHI MEI OPTOELECTRONICS;
COMPAL ELECTRONICS, INC.; HANNSTAR DISPLAY CORP.;
JEAN CO., LTD.; LITE-ON TECHNOLOGY CORP.;
LITE-ON, INC. a/k/a LITEON TRADING USA, INC.;
MAG TECHNOLOGY CO., LTD.;
MAG TECHNOLOGY USA, INC.;
PROVIEW INTERNATIONAL HOLDINGS, LTD.;
PROVIEW TECHNOLOGY, INC.;
PROVIEW ELECTRONICS CO., LTD.; and
QUANTA DISPLAY, INC.

Defendants.

Case No.: 05-27-SLR

Jury Trial Demanded

**GUARDIAN'S REPLY TO GATEWAY, INC.'S
COUNTERCLAIMS TO FIRST AMENDED COMPLAINT**

Guardian Industries Corp. ("Guardian") replies to Gateway, Inc.'s ("Gateway")

counterclaims as follows:

REPLY TO COUNTERCLAIMS

112. Admitted.

113. Admitted.

114. Guardian admits that Gateway's counterclaims purport to include claims for declaratory judgment of non-infringement and patent invalidity and that this Court has jurisdiction over the subject matter of these particular counterclaims, but denies that the counterclaims have any merit and denies that Gateway is entitled to any of the relief sought in its counterclaims or Prayer. Guardian denies any and all remaining averments in Paragraph 114 of Gateway's counterclaim.

115. Guardian admits that venue is proper in this Court.

116. Guardian admits that there exists an actual controversy between Guardian and Gateway concerning infringement of the '214, '187, '065 and '588 patents. Guardian denies any and all remaining averments in Paragraph 116 of Gateway's counterclaims.

117. Paragraph 117 of Gateway's counterclaims is a request for relief, and does not state any allegation that calls for a response. Gateway is not entitled to a declaration from the Court that Gateway has not infringed any of the '214, '187, '065 and '588 patents, either directly, contributorily, or by inducement, or either literally or under the doctrine of equivalents. Guardian denies any and all remaining averments in Paragraph 117 of Gateway's counterclaims.

118. Guardian admits that there exists an actual controversy between Guardian and Gateway concerning the alleged invalidity of the '214, '187, '065 and '588 patents. Guardian denies any and all remaining averments in Paragraph 118 of Gateway's counterclaims.

119. Paragraph 119 of Gateway's counterclaims is a request for relief, and does not state any allegation that calls for a response. Gateway is not entitled to a declaration from the Court that any of the '214, '187, '065 and '588 patents are invalid for failure to comply with the provisions of the patent laws, 35 U.S.C. §§ 100 *et seq.*, including but not limited to one or more

of 35 U.S.C. §§ 101, 102, 103, and/or 112. Guardian denies any and all remaining averments in Paragraph 119 of Gateway's counterclaims.

120. Guardian denies that Gateway is entitled to recover any attorneys' fees and/or costs from Guardian and denies that any of Guardian's activities provide any basis for finding in favor of Gateway on the issue of whether this is an exceptional case. Guardian does contend that certain defendants' activities, including potentially Gateway, provide a basis for this Court to find, in favor of Guardian, that this is an exceptional case under 35 U.S.C. § 285, and to award Guardian its attorneys' fees and its costs incurred in connection with this litigation. Guardian denies any and all remaining averments in Paragraph 120 of Gateway's counterclaims.

121. Guardian admits that Paragraph 121 of Gateway's counterclaims requests a trial by jury as to all fact issues in this lawsuit. Guardian further responds that Paragraph 121 of Gateway's filing contains no allegation that necessitates any admission or denial from Guardian, nonetheless, to the extent any response is necessary, Guardian denies any and all remaining averments in Paragraph 121 of Gateway's counterclaims.

WHEREFORE Guardian respectfully submits that Gateway's counterclaims should be dismissed, with costs assessed against Gateway, and seeks such further relief as the Court deems appropriate.

* * * * *

Dated: May 23, 2005

/s/ Richard K. Herrmann
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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of May, 2005, I electronically filed the foregoing document, **GUARDIAN'S REPLY TO GATEWAY, INC.'S COUNTERCLAIMS TO FIRST AMENDED COMPLAINT**, with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

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Additionally, I hereby certify that on the 23rd day of May, 2005, the foregoing document was served via email on the following non-registered participants:

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